



FEDERAL ELECTION COMMISSION
Washington, DC 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 22 2011

Alexander Stone

Vancouver, WA 98663

RE: MUR 6448

Dear Mr. Stone:

On July 19, 2011, the Federal Election Commission reviewed the allegations in your complaint dated December 27, 2010, and found that on the basis of the information provided in your complaint and the available information, there is no reason to believe that NoTolls.com violated 2 U.S.C. §§ 433(a), 434(a), or 441a(f), or 441d(a) regarding its website. The Commission also voted to dismiss the allegations that NoTolls.com violated 2 U.S.C. §§ 441d(a) regarding its mailer and 434(c) with regard to its expenditures for the website and mailer, and cautioned NoTolls.com to ensure that its conduct is in compliance with the Act and the Commission regulations. Finally, the Commission found no reason to believe that David Madore or U.S. Digital violated 2 U.S.C. § 441a(a). Accordingly, on July 19, 2011, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Christopher Hughey
Acting General Counsel



BY: Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** NoTolls.com

MUR 6448

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8 **I. GENERATION OF MATTER**

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10 This matter was generated by a complaint filed with the Federal Election Commission
11 (“the Commission”) by Alexander Stone. See 2 U.S.C. § 437g(a)(1).

12 **II. INTRODUCTION**

13
14 The complaint alleges that NoTolls.com (“NoTolls”), a state-registered committee not
15 registered with the Commission, violated the Federal Election Campaign Act of 1971, as
16 amended (“the Act”), when it failed to register and file reports with the Commission despite
17 exceeding the statutory limits for political committee status through contributions received or
18 expenditures made for its website and a mailer that promoted two federal candidates. Complaint
19 at 1-2. In addition, the complaint alleges that NoTolls’s website and mailer are independent
20 expenditures that did not include disclaimers compliant with the Act. *Id.* at 2. Finally, the
21 complaint alleges that NoTolls received excessive contributions. *Id.*

22 In its response, NoTolls asserts that it “never purposely campaigned for any federal
23 candidates,” although it acknowledges that its website and mailer included two federal
24 candidates. See NoTolls Response at 1-2. NoTolls also asserts that it took remedial action prior
25 to the complaint. *Id.* NoTolls did not address the allegation that it exceeded the statutory
26 threshold for political committee status by contributions received or expenditures made, nor did
27 it address the allegations that it was required to include a disclaimer on its website and mailer.

28 For the reasons discussed below, the Commission finds no reason to believe that NoTolls
29 failed to register and file reports as a political committee or failed to include a disclaimer on its

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1 website. The Commission dismisses the allegations that NoTolls violated 2 U.S.C. §§ 441d(a)
2 and 434(c) by failing to include a complete disclaimer on its mailer and failing to report its
3 independent expenditures for its website and mailer, cautions NoTolls.com. *See Heckler v.*
4 *Chaney*, 470 U.S. 821 (1985).

5 **III. FACTUAL AND LEGAL ANALYSIS**

6 **A. Factual Background**

7 NoTolls is a Washington State-registered committee organized in July 2010 to oppose
8 tolls and light rail transportation across the Columbia River by way of Interstate 5 and its state
9 and local bypasses. The complaint included a screenshot of NoTolls's website and a copy of a
10 mailer, herein referred to as "Columbia River." The website screenshot begins with a
11 NoTolls.com logo and states "Your vote is urgently needed to stop permanent tolls on the I-205,
12 SR-500, SR-14, I-84 and I-5 corridor." The site continues with the statement that "NoTolls.com
13 proudly recommends these candidates....," and contains photographs of eighteen candidates with
14 their names and elective offices sought. The first two candidates recommended are Dino Rossi,
15 the Republican candidate for U.S. Senate from Washington State, and Jaime Herrera, the
16 Republican candidate for U.S. Representative from Washington's 3rd Congressional District.
17 NoTolls asserts that its campaign focused only on a local issue and explained that it solicited the
18 position of all Democratic and Republican candidates on this issue, and when candidates
19 responded, it posted the results. *See NoTolls Response at 2.*

20 The "Columbia River" mailer is a three-page communication. The first page contains a
21 drawing of a bridge with the words "We all agree...A new bridge across the Columbia River
22 would be GREAT!! but..." The second page begins "NOT AT THIS COST!!" The second page
23 also contains a cartoon depiction of a bridge and light rail system with indicators addressing

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1 potential toll collection points. On the same page at the bottom left it states "Re-elect
2 incumbents for more of the same **OR Elect NEW LEADERSHIP** to get us back on track. **THE**
3 **CHOICE IS YOURS!**" [emphasis in original]. The bottom right of this page states
4 "NoTolls.com proudly supports the following candidates..." and lists in four rows of various
5 fonts the names of 20 candidates. The first row, in bold, contains the first and last names of three
6 local candidates. The remaining rows contain the last names of seventeen candidates, the first
7 two of whom are Rossi and Herrera. The last page of the "Columbia River" mailer contains a
8 disclaimer, "Paid for by NoTolls.com" above NoTolls's return address, and a postage paid
9 permit.

10 NoTolls asserts that "[a]s soon as [it] recognized that there was an error regarding the
11 mailer, prior to Mr. Stone's complaint, [it] immediately stopped printing the mailer." See
12 NoTolls Response at 1. NoTolls asserts that it distributed the mailer within a "local district," not
13 state-wide or congressional district 3-wide, and that NoTolls properly disclosed its mailer to the
14 state disclosure commission. See *id.* NoTolls further asserts that it "pulled the radio ad
15 (promoting local candidates), then contacted the [Washington] Public Disclosure Commission
16 ('PDC') immediately to report that [it] made an error and explained how it was rectified."
17 See *id.* NoTolls states that it reported to the PDC on October 20, 2010. See *id.*¹ Finally,
18 NoTolls states that it did not attempt to violate any law or conceal any records. See *id.* at 2.

19 **B. Political Committee Status**

20 Citing NoTolls's state disclosure reports, the complaint alleges that as of October 9,
21 2010, NoTolls met the threshold requirements for political committee status by receiving or
22 spending in excess of \$1,000 in connection with federal elections in support of federal candidates

¹ The complaint in the instant matter was filed on December 27, 2010.

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1 Dino Rossi and Jaime Herrera. *See* Complaint at 1-2. Under the Act, groups that trigger
2 political committee status are required to register with the Commission and publicly report all of
3 their receipts and disbursements. 2 U.S.C. §§ 433(a) and 434(a). The Act defines a “political
4 committee” as any committee, association, or other group of persons that receives
5 “contributions” or makes “expenditures” for the purpose of influencing a Federal election which
6 aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The term
7 “contribution” is defined to include “any gift, subscription, loan, advance, or deposit of money or
8 anything of value made by any person for the purpose of influencing any election for Federal
9 office.” 2 U.S.C. § 431(8)(A)(i). The term “expenditure” is defined to include “any purchase,
10 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
11 person for the purpose of influencing any election for Federal Office.” 2 U.S.C. § 431(9)(A)(i).
12 An organization will not be considered a “political committee” unless its “major purpose is
13 Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).” Political
14 Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7,
15 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*
16 (*MCFL*), 479 U.S. 238, 262 (1986).

17 **1. NoTolls.com contributions received**

18 The complaint alleges that during the 2010 election cycle, NoTolls received excessive
19 and in-kind corporate contributions that it subsequently used to support two federal candidates.
20 *See* Complaint at 1-2. The available information provides that NoTolls received in excess of
21 \$177,000 in total contributions during the 2010 election cycle. The majority of these funds were
22 the result of cash and in-kind contributions from David Madore (approximately \$134,000 and

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1 \$25,000, respectively), and cash and in-kind contributions from U.S. Digital (approximately
2 \$14,000).²

3 Although NoTolls received in excess of \$1,000 from David Madore and U.S. Digital, the
4 available information does not suggest that NoTolls solicited funds for the purpose of
5 influencing federal elections. The complaint asserts that NoTolls's fundraising solicitations did
6 not inform donors that their contributions would be used in connection with federal elections,
7 although the complaint did not provide copies of any solicitations. See Complaint at 2. NoTolls
8 similarly did not provide a copy of any of its solicitations, but asserts that while its mailer
9 included two federal candidates, its conduct was limited to local district activity. See NoTolls
10 Response at 1. Based on the available information, it does not appear that NoTolls has satisfied
11 the statutory threshold for political committee status by receiving contributions for the purpose
12 of influencing federal elections exceeding \$1,000. See 2 U.S.C. § 431(4)(A).

13 **2. NoTolls.com expenditures made**

14 The complaint alleges that NoTolls's website and "Columbia River" mailer advocate the
15 election of two federal candidates. See Complaint at 1. The Act's definition of expenditure,
16 when applied to communications made independently of a candidate or a candidate's committee,
17 reaches only funds used for communications "expressly advocating the election or defeat of a
18 clearly identified candidate." 2 U.S.C. § 431(17). The Commission has defined express
19 advocacy in the regulations set forth at 11 C.F.R. § 100.22. Under Section 100.22(a),

20 Expressly advocating means any communication that – (a) uses phrases such as
21 "vote for the President," "re-elect your Congressman," "support the Democratic
22 nominee," "cast your ballot for the Republican challenger for U.S. Senate in

² See Washington State Public Disclosure Commission,
http://www.pdc.wa.gov/qviewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender/ISubmitQuery.aspx?DSN=IMAGE&AppName=PDC&FILER+NAME=NOTOLLS.COM*&FORM+TYPE=List:%20%27C6%27,%27C6%20AMENDED%27.

Georgia,” “Smith for Congress,” “Bill McKay in ’94,” “vote Pro-Life” or “vote Pro-Choice” accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, “vote against Old Hickory,” “defeat” accompanied by a picture of one of more candidate(s), “reject the incumbent,” or communications of campaign slogan(s), or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say “Nixon’s the One,” “Carter ’76,” “Reagan/Bush” or “Mondale!”

11 C.F.R. § 100.22(a).

The website and mailer contain express advocacy under 11 C.F.R. § 100.22(a) because both refer to federal candidates Rossi and Herrera by name and contain language urging their election. The website stated that it “proudly recommends these candidates,” and posted pictures of the two federal candidates and other state candidates, while the mailer stated that “NoTolls.com proudly supports the following candidates...,” “Re-elect incumbents for more of the same OR Elect NEW LEADERSHIP to get us back on track. **THE CHOICE IS YOURS!**” [emphasis in original].³ Accordingly, the disbursements NoTolls made for its website and mailer constitute expenditures under the Act that count toward the statutory threshold for political committee status.

The complaint alleges that NoTolls spent \$13,714.05 for the “Columbia River” mailer and \$10,963.76 for its website. See Complaint at 1-2. These figures correspond to the payments for postage, mail house services, and mailer printing for the mailer and website design, editing, and administration fees disclosed in NoTolls’s state disclosure reports.⁴ According to the complaint, NoTolls exceeded the statutory threshold for expenditures made based on a per-

³ The website and “Columbia River” communication constitute express advocacy as defined in Section 100.22(a); therefore, an analysis of the “Columbia River” communication under section 100.22(b) is unnecessary.

⁴ See

http://www.pdc.wa.gov/viewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender/ISubmitQuery.aspx?DSN=IMAGE&AppName=PDC&FILER+NAME=NOTOLLS.COM*&FORM+TYPE=List.%20%27C6%27.%27C6%20AMENDED%27.

1 candidate allocation of the total costs for the website and mailer. The complainant divided the
2 costs of the website by the 18 candidates promoted, concluding that NoTolls spent \$609.10
3 toward each candidate, and divided the total mailer costs by the 20 candidates promoted,
4 concluding that NoTolls spent \$685.70 toward each candidate. *See* Complaint at 1-2. However,
5 NoTolls disclosed in a Washington State reporting form for independent expenditures dated
6 October 28, 2010, that it attributed \$488 of the total independent expenditure expense for its
7 mailer to each federal candidate.⁵ The available information does not explain the difference
8 between the complaint's \$685.70 per-candidate allocation and NoTolls's \$488 per-candidate
9 allocations for the mailer.⁶ In any event, the total cost attributed to federal candidates on the
10 website is \$1,218.20 (\$609.10 x 2), and the total cost attributed to federal candidates in the
11 mailer is at least \$976 (\$488 x 2), for a grand total of at least \$2,194.20 in expenditures,
12 exceeding the \$1,000 statutory threshold for political committee status. *See* 2 U.S.C.
13 § 431(4)(A).

14 Although NoTolls appears to meet the statutory threshold for political committee status,
15 it does not appear that its major purpose was "Federal campaign activity (*i.e.*, the nomination or
16 election of a Federal candidate)." *See* Political Committee Status: Supplemental Explanation and
17 Justification, 72 Fed. Reg. at 5597. NoTolls's response and other available information indicate
18 that NoTolls was formed to oppose tolls and light rail transportation for local infrastructure. In

⁵ *See*
http://www.pdc.wa.gov/viewreports/results.aspx?rpt=http://hera.pdc.wa.gov/PublicAppXtender/ISubmitQuery.aspx?DSN=IMAGE&AppName=PDC&FILER+NAME=NOTOLLS.COM*&FORM+TYPE=List:%20%27C6%27.%27C6%20AMENDED%27. NoTolls did not disclose its website as an independent expenditure.

⁶ Overall, the principle of allocating the overall costs of the mailer between the federal and non-federal candidates is consistent with the Commission's regulations regarding the allocation of expenses between candidates. *See* 11 C.F.R. § 106.1(a). The Commission has no information regarding how NoTolls allocated its expenses. It is possible that it attributed a per-candidate cost based upon the placement and font size of the candidate's name. The two federal candidates included on the subject mailer were listed on the second tier with a font size smaller than the first group, but larger than a third group of candidates. In addition, only the first tier contained the candidates' first and last names.

1 its response, NoTolls asserts that its “campaign was specific to local candidates.” *See* NoTolls
2 Response at 2. Only two of the eighteen candidates promoted on NoTolls’s website were federal
3 candidates and only two of the 20 candidates promoted in NoTolls’s mailer were federal
4 candidates. While NoTolls acknowledges including two federal candidates on its website and
5 mailer, it insists that it “never officially campaigned” for Rossi and Herrera because its mailers
6 were only sent to a local district. *See* NoTolls Response at 1. As such, the available information
7 indicates that the focus of NoTolls’s activities related to a local issue regarding tolls, not the
8 election of federal candidates. Accordingly, the Commission finds no reason to believe that
9 NoTolls.com violated 2 U.S.C. §§ 433(a) or 434(a) by failing to register and report as a political
10 committee.

11 **C. Disclaimers**

12 The complaint alleges that NoTolls’s website and its “Columbia River” mailer did not
13 include the required disclaimers. *See* Complaint at 2. All public communications made by a
14 political committee and all Internet websites of political committees available to the general
15 public must include disclaimers. *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). Any person
16 that makes a disbursement for a public communication that expressly advocates the election of a
17 clearly identified candidate must include a disclaimer that conforms to the requirements in
18 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)-(c). Public communications include any mass
19 mailing to the general public or any other form of general public political advertising. 11 C.F.R.
20 § 100.26. Mass mailing is defined as a mailing by U.S. mail or facsimile of more than 500
21 pieces of mail matter of an identical or substantially similar nature within any 30-day period.
22 2 U.S.C. § 431(23); 11 C.F.R. § 100.27.

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1 NoTolls's "Columbia River" mailer expressly advocated the election of federal
2 candidates Rossi and Herrera. *See* 11 C.F.R. §§ 100.22(a). According to NoTolls's state
3 disclosure reports, it spent a total of \$13,714.05 for the mailer, of which it spent \$7,729.92 for
4 postage. Thus, it is reasonable to conclude NoTolls distributed more than 500 copies of the
5 mailer. *See* 11 C.F.R. § 100.27. Accordingly, the disclaimer provisions of the Act apply. *See*
6 2 U.S.C. § 441d(a)(1)-(3); 11 C.F.R. § 110.11(a)-(c). The mailer contains a disclaimer in the
7 return address, which states "Paid for by NoTolls.com" and contains a street address. However,
8 the mailer does not state whether the communication was authorized by any federal candidate or
9 candidate's committee. *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(b).⁷ Therefore, it appears
10 that NoTolls's "Columbia River" mailer does not satisfy the disclaimer requirements in the Act;
11 thus, NoTolls appears to have violated 2 U.S.C. § 441d(a).

12 As for NoTolls's website, it too expressly advocates the election of federal candidates
13 Rossi and Herrera. *See* 11 C.F.R. § 100.22(a). However, because the Commission concludes
14 that NoTolls is not a political committee under the Act, and its website does not meet the
15 definition of a public communication, the disclaimer provisions do not apply to the website. *See*
16 2 U.S.C. § 441d(a); 11 C.F.R. §§ 110.11(a) and 100.26. Accordingly, the Commission finds no
17 reason to believe that NoTolls violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on
18 its website.

⁷ In addition, the disclaimer information is not contained in a printed box. *See* 2 U.S.C. § 441d(c)(2);
11 C.F.R. § 110.11(c)(2)(ii).

D. Independent Expenditure Reporting

The complaint alleges that the NoTolls's "Columbia River" mailer and website are independent expenditures. *See* Complaint at 2. An independent expenditure is an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16. Under the Act, every person other than a political committee who makes independent expenditures in excess of \$250 must file a report that discloses information regarding its expenditures and identifies each person who made a contribution in excess of \$200 for the purpose of furthering an independent expenditure. 2 U.S.C. § 434(c). The mailer and website expressly advocate the election of two clearly-identified federal candidates. *See* 11 C.F.R. § 100.22(a). NoTolls's state disclosure reports disclose that it spent \$13,714 and \$10,963.76 for the mailer and website, respectively, with an allocated federal expenditure portion of at least \$2,194.20. Therefore, it appears that NoTolls was required to file an independent expenditure report with the Commission, and thus appears to have violated 2 U.S.C. § 434(c).⁸

E. Alleged Excessive Contributions

Citing NoTolls's state disclosure reports, the complaint alleges that NoTolls accepted excessive contributions from David Madore totaling over \$134,000, and that NoTolls accepted contributions in excess of \$5,000 from U.S. Digital. *See* Complaint at 2; 2 U.S.C. §§ 441a(a)

⁸ There is an additional independent expenditure reporting requirement at 2 U.S.C. § 434(g) under which persons that make independent expenditures aggregating \$1,000 or more after the 20th day, but no more than 24 hours, before the date of an election, must file a report within 24 hours with the Commission describing the expenditure. NoTolls's state disclosure reports disclose that it made disbursements related to the "Columbia River" mailer on October 9, 2010, before the 20-day timeframe for section 434(g) reporting.

1 and 441a(f). Because NoTolls is not a federal political committee, it is not subject to the Act's
2 contribution limits. Accordingly, the Commission finds no reason to believe that NoTolls.com
3 violated 2 U.S.C. § 441a(f) by receiving excessive contributions.

4 **F. Conclusion**

5 It appears that NoTolls violated 2 U.S.C. §§ 441d(a) and 434(c) by failing to include a
6 complete disclaimer on its "Columbia River" mailer and failing to file an independent
7 expenditure report for its mailer and website. Considering the small federal share of the amount
8 in violation, pursuit of this matter would not merit the further use of Commission resources.
9 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the allegations
10 that NoTolls violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on its mailer and
11 2 U.S.C. § 434(c) by failing to file the required independent expenditure report, and cautions
12 NoTolls.com. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT: U.S. Digital****MUR 6448****I. GENERATION OF MATTER**

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Alexander Stone. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that U.S. Digital made excessive contributions to NoTolls.com ("NoTolls"), a state-registered committee not registered with the Commission, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). *See* Complaint at 1-2. The complaint alleges that U.S. Digital made contributions to NoTolls in excess of \$5,000. *Id.* at 2; 2 U.S.C. § 441a(a). The Act defines "contribution" to include "anything of value made by any person for the purpose of influencing any election for Federal office." *See* 2 U.S.C. § 431(8)(A).

In its response, U.S. Digital acknowledges that it made in-kind contributions to NoTolls, but asserts that its conduct was limited to support of a local issue, opposing tolls on the Interstate 5 Bridge over the Columbia River. *See* U.S. Digital Response. Based on the available information, NoTolls is not a federal political committee; therefore, the monetary and in-kind donations made by U.S. Digital are not considered to be "contributions" under the Act, and are not subject to the Act's contribution limits. Accordingly, the Commission finds no reason to believe that U.S. Digital violated 2 U.S.C. § 441a(a).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: David Madore MUR 6448

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Alexander Stone. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that David Madore made excessive contributions to NoTolls.com ("NoTolls"), a state-registered committee not registered with the Commission, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). *See* Complaint at 1-2. Citing NoTolls's state disclosure reports, the complaint alleges that David Madore made cash and in-kind contributions to NoTolls in excess of \$134,000. *Id.* at 2; 2 U.S.C. § 441a(a). The Act defines "contribution" to include "anything of value made by any person for the purpose of influencing any election for Federal office." *See* 2 U.S.C. §§ 431(8)(A).

In his response, David Madore acknowledges that he made contributions to NoTolls, and that NoTolls produced a matter that included two federal candidates, but asserts that NoTolls was organized in support of a local issue, opposing tolls on the Interstate 5 Bridge over the Columbia River. *See* David Madore Response at 1. Based on the available information, NoTolls is not a federal political committee; therefore, the monetary and in-kind donations made by David Madore are not considered to be "contributions" under the Act, and are not subject to the Act's contribution limits. Accordingly, the Commission finds no reason to believe that David Madore violated 2 U.S.C. § 441a(a).